

No. 16319 ✓

United States
Court of Appeals
for the Ninth Circuit

DAVID ALLEN PARR,

Appellant.

VS.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

MAR 26 1959

No. 16319

**United States
Court of Appeals**
for the Ninth Circuit

DAVID ALLEN PARR,

Appellant.

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

**Appeal from the United States District Court for the
Northern District of California,
Southern Division.**

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Attorneys, Names and Addresses of	1
Certificate of Clerk Dated January 12, 1959 ..	43
Certificate of Clerk Dated February 16, 1959 ..	44
Indictment	3
Judgment and Commitment.....	14
Minute Entries:	
October 6, 1958—Order Granting Motion to Quash Service of Subpoena	8
October 7, 1958—Order Denying Motion for Judgment of Acquittal; Sentence ..	12
Motion for Judgment of Acquittal	9
Motion to Quash Subpoena	5
Notice of	7
Notice of Appeal	16
Statement of Points on Appeal.....	46
Transcript of Proceedings	17
Witnesses:	
Hood, John R.	
—direct	25

INDEX

PAGE

Witnesses—(Continued):

Parr, David Allan

—direct 39

—cross 40

Vollmer, Kenneth J.

—direct 33

—cross 38

—redirect 38

Waiver of Jury Trial 7

NAMES AND ADDRESSES OF ATTORNEYS

J. B. TIETZ,
257 South Spring Street,
Los Angeles 12, California,
For Appellant & Defendant.

ROBERT H. SCHNACKE,
United States Attorney;
DONALD B. CONSTINE,
Assistant United States Attorney,
For Appellee & Plaintiff.

In the United States District Court for the
Northern District of California, Southern Division

Criminal No. 36116

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID ALLEN PARR,

Defendant.

INDICTMENT

Violation: Section 12(a), Universal Military Training and Service Act, 50 U.S.C. App. 462(a)—
(Refusal to Submit to Induction)

The Grand Jury charges that: David Allen Parr, defendant herein, being a male citizen, of the age 25 years, residing in the United States and under the duty to present himself for and submit to registration under the provisions of Public Law 759 of the 80th Congress, approved June 24, 1948, known as the "Selective Service Act of 1948," as amended by Public Law 51 of the 82nd Congress, approved June 19, 1951, known as the "Universal Military Training and Service Act," hereinafter called "said Act," and thereafter to comply with the rules and regulations of said Act, and having, in pursuance of said Act and the rules and regulations made pursuant thereto, become a registrant of Local Board No. 31 of the Selective Service System, City of Brooklyn, County of Kings, State of New York, which said Local Board No. 31 was duly created,

appointed and acting for the area of which the said defendant is a registrant, did, on or about the 25th day of April, 1957, in the City of Oakland, County of Alameda, State and Northern District of California, knowingly fail to perform such duty, in that he, the said defendant, having theretofore been duly classified in Class I-A and having theretofore been duly ordered by his said Local Board No. 31 to report for induction into the Armed Forces of the United States, and having thereafter, at his own request, been transferred to Local Board No. 21 of the Selective Service System, in Sacramento, State of California, for induction into the Armed Forces of the United States, and having been duly ordered by the said Local Board No. 21 to report at Oakland, California, on the 25th day of April, 1957, for induction into the Armed Forces of the United States, and having so reported, did, on the 25th day of April, 1957, in the City of Oakland, County of Alameda, State and Northern District of California, knowingly refuse to submit himself to induction and be inducted into the Armed Forces of the United States as provided in the said Act, and the rules and regulations made pursuant thereto.

A True Bill.

/s/ STANLEY L. KING,
Foreman.

LLOYD H. BURKE,
United States Attorney.

Approved as to form:

/s/ J. W. RIORDAN, JR.

Penalty: Imprisonment not to exceed 5 years and/or fine not to exceed \$10,000.

Bail, \$1,000; Goodman, Judge.

[Endorsed]: Filed May 1, 1958.

[Title of District Court and Cause.]

MOTION TO QUASH SUBPOENA

Comes now Robert H. Schnacke, United States Attorney, and John H. Riordan, Jr., Assistant United States Attorney, and move to quash the subpoena duces tecum directed to "U. S. Attorney, Northern Dist. Calif., or his deputy or ass't.," served on United States Attorney on August 14, 1958, at San Francisco, California, directing him to appear and testify and bring with him at 9:30 o'clock a.m. on August 20, 1958, in the above-entitled case the complete secret investigative report made by the agent or agents of the Federal Bureau of Investigation and used by Hearing Officers of the Department of Justice, in conducting the hearing and making his report on the conscientious objections of David Allen Parr, the defendant, which was also used by the Department of Justice in making the recommendation to the appeal board, to-

gether with the report of the Hearing Officer to the Attorney General.

This motion is made on the authority and basis of the following cases:

Kaline vs. United States,
9th Cir., 235 F.2d 54;

United States vs. Nugent,
346 U.S. 1;

Simmons vs. United States,
348 U.S. 397; 215 F.2d 782;

Unreported opinion of United States District Judge Louis E. Goodman in United States vs. Richard Joseph Muelrath, CR. No. 35649, United States District Court, Northern District of California, Southern Division, July 31, 1957;

Blalock vs. United States,
247 F.(2) 615;

Meredith vs. United States,
247 F.(2) 622.

ROBERT H. SCHNACKE,
United States Attorney,

By /s/ JOHN H. RIORDAN, JR.,
Assistant United States
Attorney.

Notice of Motion

To: J. B. Tietz, Attorney at Law, 410 Douglas Building, South Spring and Third Streets, Los Angeles 12, California.

You will please take notice that on Wednesday, August 20, 1958, at 9:30 o'clock a.m., or as soon thereafter as counsel can be heard, in the Courtroom of Honorable Albert C. Wollenberg, Room 248, Post Office Building, 7th and Mission Streets, San Francisco, California, the United States will move to quash the subpoena in the above-entitled case.

ROBERT H. SCHNACKE,
United States Attorney;

By /s/ JOHN H. RIORDAN, JR.,
Assistant United States
Attorney.

[Endorsed]: Filed August 18, 1958.

[Title of District Court and Cause.]

WAIVER OF JURY TRIAL

In conformity with Rule 23 of the Rules of Criminal Procedure for the District Courts of the United States, effective March 21, 1946, we, the undersigned, do hereby waive trial by jury and request that the above-entitled cause be tried before the Court sitting without a jury.

Dated: San Francisco, California, Aug. 20, 1958.

/s/ DAVID A. PARR,
Defendant.

/s/ J. B. TIETZ,
Attorney for Defendant.

/s/ R. H. FORB,
Assistant United States
Attorney.

Approved:

/s/ GEO. B. HARRIS,
Judge, United States District Court, Northern Dis-
trict of California.

[Endorsed]: Filed August 20, 1958.

United States District Court for the Northern
District of California, Southern Division

At a Stated Term of the United States District
Court for the Northern District of California,
Southern Division, held at the Courtroom thereof,
in the City and County of San Francisco, on Mon-
day, the 6th day of October, in the year of our Lord
one thousand nine hundred and fifty-eight.

Present: The Honorable Michael J. Roche, District
Judge.

[Title of Cause.]

MINUTE ORDER GRANTING GOVERN-
MENT'S MOTION TO QUASH SERVICE
OF SUBPOENA

This case came on regularly this day for hearing

on motion to quash service of subpoena and for trial.

Donald B. Constine, Esq., Assistant United States Attorney, was present on behalf of the United States.

J. B. Tietz, Esq., appeared as attorney for defendant.

Opening statements made by counsel for both sides.

Mr. Constine introduced in evidence and filed a certain exhibit which was marked U. S. Exhibit No. 1.

Government's motion to quash service of subpoena was ordered granted.

The further trial of this case was continued to October 7, 1958, at 10 o'clock a.m.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL

The defendant moves the Court for a judgment of acquittal for each and every one of the following reasons:

1. The failure of the court to compel the production of the F.B.I investigative report and the report of the Hearing Officer to the Attorney General, and the order of the court sustaining the motion to quash the subpoena duces tecum made by the Gov-

ernment, or the ruling of the court prohibiting defendant to use said documents in his defense, constitute a deprivation of the defendant's rights to due process of law upon criminal trials, and also violates the statutes and rules of court providing for the issuance of subpoenas in behalf of defendants in criminal cases.

2. The denial of the conscientious objector status by the Selective Service System and the recommendation by the Hearing Officer of the Department of Justice and by the Department of Justice to the Appeal Board were without basis in fact, arbitrary, capricious and contrary to law.

3. The report of the Hearing Officer relied upon by the Department of Justice and the Appeal Board, and the recommendation of the Department to the Appeal Board are arbitrary, capricious and illegal because they refer to artificial, fictitious and unlawful standards not authorized by the Act and Regulations and were used by the Appeal Board to classify according to irrelevant and immaterial lines in determining that the defendant was not a conscientious objector when a pursuit of the Act and Regulations was the only thing for the Hearing Officer, the Department, and the Appeal Board to follow.

4. The report of the Hearing Officer relied upon by the Department of Justice and the recommendation of the Department relied upon by the Appeal Board were based upon and/or were tainted with suspicion and speculation.

5. Defendant was denied a fair hearing before the Appeal Board in that the Appeal Board was not given any of the following evidentiary material: The full reports of the Federal Bureau of Investigation concerning the defendant, and the full report of the Hearing Officer.

6. The defendant was denied a fair hearing before the Appeal Board in that he was not given the following evidentiary material in time to use it before the Appeal Board decision (or at any time): The full reports of the Federal Bureau of Investigation concerning the defendant, and the full report of the Hearing Officer.

7. Defendant was denied procedural due process in that the local board failed to have available an Adviser to Registrants and to have posted conspicuously or any place, the names and addresses of such adviser, as required by the Regulations, and to defendant's prejudice.

8. The Government has wholly failed to show that defendant refused to submit to induction in that he was not given the opportunities provided by the applicable regulations to go through the mandatory induction prerequisites at the induction station.

9. There is no evidence to show that the defendant is guilty as charged in the indictment.

10. The Government has wholly failed to prove a violation of the Act and Regulations by the defendant as charged in the indictment.

11. That said motion is also based on such other grounds, not hereinabove included, as will be set forth in defendant's Memo of Points and Authorities.

Dated: August 20, 1958.

Respectfully submitted,

/s/ J. B. TIETZ,

Attorney for Defendant.

[Endorsed]: Filed October 7, 1958.

United States District Court for the Northern
District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Tuesday, the 7th day of October, in the year of our Lord one thousand nine hundred and fifty-eight.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

MINUTE ORDER DENYING DEFENDANT'S
MOTION FOR JUDGMENT OF ACQUIT-
TAL; SENTENCE

The parties hereto being present as heretofore, the further trial of this case was this day resumed.

John R. Hood and Sgt. Kenneth J. Vollmer were sworn and testified on behalf of the plaintiff.

The plaintiff introduced in evidence and filed a certain exhibit which was marked U. S. Exhibit No. 2.

Thereupon plaintiff rested.

David Allen Parr was sworn and testified in his own behalf.

The defendant introduced a certain exhibit which was marked Defendant's Exhibit A for Identification.

Defendant's motion for judgment of acquittal was Ordered denied.

Thereupon the defendant rested.

After arguments by counsel, and the case having been submitted and due consideration thereon had, the Court Adjudged the defendant Guilty as charged in the indictment.

The defendant was called for judgment. The Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or

his authorized representative for imprisonment for a period of One (1) Year.

Ordered that judgment be entered herein accordingly.

Further Ordered that defendant be granted a stay of execution of judgment for period of two (2) weeks.

United States District Court for the Northern
District of California, Southern Division

No. 36116

UNITED STATES OF AMERICA

vs.

DAVID ALLEN PARR

JUDGMENT AND COMMITMENT

On this 7th day of October, 1958 came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of Not Guilty and a Finding of Guilty by the Court of the offense of Violation: of Section 12 (a), Universal Military Training and Service Act, (50 United States Code, App. 462 (a) Refusal to Submit to Induction). Defendant did, on or about April 25, 1957, at Oakland, California, knowingly refuse to submit himself to induction and be inducted into the Armed Forces of the United

States, as charged in the Indictment (Single Count) and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year.

Further Ordered that execution be stayed until October 21, 1958.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ MICHAEL J. ROCHE,
United States District Judge.

Examined by:

/s/ DONALD B. CONSTINE,
Assistant U. S. Atty.

[Endorsed]: Filed October 8, 1958.

Entered October 10, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Appellant, David Allen Parr, resides at Route 2, Box 241, Orland, California.

Appellant's attorney, J. B. Tietz, maintains his office at 410 Douglas Building, 257 South Spring Street, Los Angeles 12, California.

The offense was failing to submit to induction, U. S. C., Title 50 App., Sec. 462—Universal Military Training and Service Act, 1951.

On October 7, 1958, after a verdict of Guilty, the Court sentenced the appellant to one year confinement in an institution to be selected by the Attorney General.

I, J. B. Tietz, appellant's attorney, being authorized by him to perfect an appeal, do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above stated judgment.

/s/ J. B. TIETZ,
Attorney for Appellant.

[Endorsed]: Filed October 15, 1958.

The United States District Court, Northern District
of California, Southern Division

Criminal No. 36116

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID ALLAN PARR,

Defendant.

Before: Hon. Michael J. Roche, Judge.

PROCEEDINGS ON APPEAL

October 6 and 7, 1958

Appearances:

For the Plaintiff:

ROBERT H. SCHNACKE,

United States Attorney, by

DONALD B. CONSTINE.

For the Defendant:

J. B. TIETZ, ESQ.

(Opening statements.)

* * *

Mr. Constine: Counsel for the defendant and the Government have entered into two stipulations which are customary in these cases:

(1) That a photostatic copy of the selective service file may be introduced into evidence without the necessity of producing the original,

(2) and without the necessity of calling the draft board clerk to identify it, because that clerk will be from Brooklyn, is that correct?

Mr. Tietz: Yes. The photocopy is stipulated to be a correct copy of the original.

Mr. Constine: And we have the original here in case counsel wishes to examine it at any time.

The Court: Subject to any correction that you wish to make, it will be received.

Mr. Tietz: I would wish to make an objection to the introduction of one sheet of the exhibit. It has to be referred to by number, because this originated from a New York board, and they don't do as we do here, paginate and circle the number. We have to refer to it in this trial by date. It is a sheet headed 26 April, 1957. It is to the Northern District of California, U. S. Attorney, and it is signed in typewriting (in my copy), Charles M. Traynor, First Lieutenant, [2*] Infantry, Deputy for Induction. And the ground of my objection is that it is vague, hearsay and has conclusions, and specifically the conclusion that I would object to, which I say should have more detail, is this——

Mr. Constine: Well, I would suggest as I go through the file if there is a portion of it which counsel wishes stricken, he could make that objection at that time. At this time, we intend to produce the whole selective service file, as has been done in hundreds of cases in this district. As we come to the document, to which he may make ob-

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

jection, he should do it then, in orderly procedure, without pulling one out now.

Mr. Tietz: Does counsel intend to go through every document?

Mr. Constine: I intend to point out to His Honor, as I do in these cases, the chronological history of the case. It won't take over ten minutes.

Mr. Tietz: When counsel comes to that particular document, I will make these specific objections.

Mr. Constine: I will offer in evidence as Government Exhibit 1, subject to your motion to strike, one document. Is that agreeable?

Mr. Tietz: Yes, it is.

Mr. Constine: I might state that I have marked certain pages in this file with slips of paper so I may call them to Your Honor's attention to aid your Honor in identifying [3] these documents.

(Selective Service file received in evidence and marked Plaintiff's Exhibit 1.)

Mr. Constine: We have also stipulated, your Honor, that this defendant did refuse to submit to induction at Oakland, California.

Mr. Tietz: So stipulated.

Mr. Constine: And that the date was April the 25, 1957.

Now, your Honor, may I call your Honor's attention to certain documents in this file (Exhibit 1 in evidence).

(Exhibit 1 referred to.)

Mr. Constine: I might state that it has already

been stipulated that this defendant did refuse to submit to induction on April 25, 1957, at Oakland, California.

The Court: So stipulated, counsel?

Mr. Tietz: It is so stipulated.

Mr. Constine: The Government, therefore, your Honor, will rest at this time. However, there is one document in this file, (Exhibit 1) that counsel objects to being in the file, and that perhaps should be argued at this time before we rest.

Mr. Tietz: That is correct. That document is an 8½ x 11 sheet of paper dated 26 April, 1957, bearing the local board stamp, "Received May 1, 1957, Sacramento Local Board Cr." [4]

The objection specifically is to a portion of the fourth paragraph.

The Court: Read it.

Mr. Tietz: It states—I will read the third, if the Court doesn't mind.

The Court: All right.

Mr. Tietz: The stipulation will be even more exact:

"At the group induction ceremony, he refused to submit to induction."

We stipulate that is correct.

"He was removed from the group and informed that refusal to be inducted constitutes a felony under the provisions of the Selective Service Regulations, and of the penalties that may be imposed upon conviction."

Now, I do object to the last clause; that is, I say it should be specific, the proof should be specific.

That is a mere conclusion of the purported writer of this document. “* * * and of the penalties * * *”—we don’t know what he said; we just know that he said, “of the penalties.”

Then to go on to the fourth paragraph.

The Court: This is the paragraph you are objecting to?

Mr. Tietz: Well, I see now that I’d better make a formal objection to the last clause of the third paragraph because it is vague: “and of the penalties that may be imposed upon conviction.” [5]

We do not know in this courtroom what the officer said to the young man.

“He was again informed of the imminence of induction at which time the exact words were used as prescribed in Paragraph 24 a, Army Regulations 601-270, dated 5 April, 1956 * * *”

Now, I object to that on the same grounds, that we do not know what was said. What those words were, we would have to look elsewhere, and my contention is this should relate the facts, not a conclusion.

Mr. Constine: I might state, your Honor, that this is the routine type of letter that has been produced in every Selective Service case, and I thought that counsel had stipulated that this defendant refused induction.

Mr. Tietz: Oh, yes.

Mr. Constine: And that stipulation in the usual sense is to the effect that the ceremony was read to this defendant twice and he refused induction.

(Further argument.)

Mr. Constine: Perhaps, your Honor, I am confused as to what our stipulation was. If there is any question as to what happened at the induction station—and I thought we were stipulating to the fact that this man refused induction——

Mr. Tietz: There is no question, he refused.

Mr. Constine: I would like to finish my statement.

Mr. Tietz: Excuse me. [6]

Mr. Constine: If there is any question, we will have the officer here to testify. There is no problem. We will get him, and he can say what took place and what happened, if that is what counsel is going to object to. I thought we stipulated that this defendant refused induction.

Mr. Tietz: We did.

Mr. Constine: That the ceremony was read to him twice, in the usual course of induction.

(Further argument.)

* * *

The Court: Counsel is going to have a witness here to testify what the facts are.

Mr. Constine: If counsel desires now to have that.

Mr. Tietz: Couldn't we call him now?

Mr. Constine: We have to find the man. The man is in the Army. We thought we stipulated to this, but——

Mr. Tietz: We stipulated that he refused induction, but it was all mumbo-jumbo. The young man doesn't know, but his lawyer knows it wasn't a

legal ceremony, and the courts have held that it wasn't a legal ceremony.

* * *

(Further argument re letter dated 26 April, 1957, Charles M. Traynor, First Lieutenant, Infantry, Deputy for Induction, to U. S. Attorney, San Francisco, Calif.)

The Court: Matter submitted? [7]

Mr. Constine: We will submit it.

Mr. Tietz: Yes.

The Court: The objection will be overruled.

Mr. Constine: Now, I might state to your Honor, the Government was prepared to rest at this time in the case because, I might state with all due respect to Mr. Tietz, I did not speak to Mr. Tietz before this trial and there might be a misunderstanding as to what the stipulation was as to refusal to submit to induction. I didn't know I was going to try this case until a few days ago. However, since the defense has now arisen and Mr. Tietz has stated that he attacks the induction ceremony, that he questions that it was not the proper ceremony read and that this defendant was not advised that he may go to jail for five years for refusal to submit to induction, I have made inquiry and two members of the armed forces who were present at the induction ceremony on that date, whose names I have, are available in the Bay Area, one in the service and one out of the service (I would have to subpoena him). I am making an offer of proof,

so to speak. I also have two F.B.I. agents who questioned this defendant immediately following his refusal to submit to induction. They would be available, too.

This is an offer of proof, and not evidence—I have contacted Selective Service and they tell me the ceremony read in Oakland is the same ceremony as read for many years over there, and they, in each case, read from their manual and advise [8] the defendant that he is subject to a five-year sentence and a \$10,000 fine, and we will produce those witnesses, too. I would ask until tomorrow morning so I can get them here.

Mr. Tietz: In view of the statement made by the U. S. Attorney, about one minute ago, that this point which I have raised is a matter of defense, it occurs to me that it may not be necessary for these subpoenas to be issued, because I do not propose to put the defendant on the stand on this point or to offer any testimony on this point, so we have a clear-cut legal issue which will not require—If Mr. Constine is still of the same opinion at the end of the trial—the clear-cut legal issue being: Is there sufficient proof of all the elements of the case at this stage?—and we will offer no defense on that point.

Mr. Constine: Well, this is our position, it is our position that the entire ceremony was read to the defendant, including the penalty.

The Court: Get your witnesses here. Get them here tomorrow morning at 10:00 o'clock.

Mr. Tietz: In other words, the plaintiff has not rested?

Mr. Constine: No. We ask for a continuance. I thought we had stipulated to this, but, in all due respect to Mr. Tietz, I had not talked to Mr. Tietz previously.

The Court: 10:00 o'clock tomorrow morning. [9]

Tuesday, October 7, 1958—10:00 o'Clock A.M.

The Clerk: The United States of America versus David Allan Parr, further trial.

JOHN R. HOOD

called as a witness by the plaintiff, being first duly sworn, was examined and testified as follows:

The Court: What is your full name?

The Witness: My name is John R. Hood.

The Court: What is your business or occupation?

The Witness: I am a special agent of the Federal Bureau of Investigation.

The Court: How long have you been so engaged?

The Witness: I have been so engaged 11 years.

The Court: Take the witness.

Direct Examination

By Mr. Constine:

Q. Mr. Hood, to what office of the F.B.I. are you assigned—I should say, what resident agency?

A. I am presently assigned to Berkeley resident agency.

(Testimony of John R. Hood.)

Q. And, Mr. Hood, were you an agent in this locality in April, 1957?

A. In April of 1957 I was assigned to the Oakland resident agency. [10]

Q. What squad were you assigned to at that time? A. Selective Service.

Q. And are you still a member of the Selective Service squad of the F.B.I.? A. No.

Q. And when did you cease that particular assignment? A. In September, 1957.

Q. Mr. Hood, directing your attention to April, 1957, April 25 to be exact, did you have occasion to visit the Armed Forces Induction Station in Oakland, California? A. Yes, sir, I did.

Q. And did you have occasion to witness the ceremony there at that time? A. I did.

Q. Are you able, at this time, to recognize a person known to you then as David Allan Parr? David Allan Parr is the defendant in this case; can you see him in the courtroom at this time?

A. Yes, I do.

Q. Will you kindly point him out to the Court?

A. The first row, the third person from the aisle.

Mr. Constine: Is that the defendant, Mr. Tietz? I have only seen him once.

Mr. Tietz: The third from the aisle?

The Witness: Yes, sir.

Mr. Tietz: You have picked the right one, [11] sir.

Mr. Constine: Will the defendant kindly take his proper seat?

(Testimony of John R. Hood.)

(Colloquy relating to the defendant taking place at counsel table.)

Q. (By Mr. Constine): Is this the first time you have seen the defendant since the occasion at the induction station, Mr. Hood?

A. I saw him on one other occasion.

Q. When was that?

A. That was on August 20 of this year in this building.

Q. That was when the case was originally set for trial? A. Yes.

Q. Now, Mr. Hood, to the best of your recollection, will you tell us where the defendant first was when you first observed him in the induction station at Oakland in April of 1957?

A. He was seated in the main lobby of the building of the induction center, which is on the second floor.

Q. And did you witness any ceremony involving that defendant—involving this defendant—at that time? A. Yes, I did.

Q. And will you kindly tell us who was present during the ceremony?

A. Another agent, Agent Miller.

Q. Of the F.B.I.?

A. Of the F.B.I., and Lt. Traynor. And Sgt. Vollmer. [12]

Q. Is Sgt. Vollmer here in the courtroom?

A. He was here.

Q. He is out now? A. Yes, sir.

(Testimony of John R. Hood.)

(All Government witnesses excluded.)

Q. Was there any other person present, to the best of your recollection?

A. I believe there was one other person there. I don't recall his name.

Q. To the best of your recollection, will you kindly advise the Court of what took place and what you observed regarding the defendant?

A. I observed the Lieutenant reading the induction ceremony——

Q. When you say "reading the induction ceremony," to the best of your recollection, will you tell us what was said?

A. The Lieutenant said, in substance, that this was the opportunity for the defendant to be inducted into the Armed Forces of the United States and that failure to do so would be a penalty of fine and/or imprisonment.

Q. Do you recall whether he specified the length of time of the imprisonment?

A. I believe he specified the time and the amount of money, but I don't recall.

Q. You don't recall what the amount is now?

A. No. [13]

Q. And tell us what the Lieutenant did, after he explained to the defendant—what took place?

A. Then he asked the defendant to step forward and be inducted, and he said the defendant's name, and the defendant refused to step forward.

Q. He did not step forward?

(Testimony of John R. Hood.)

A. He did not step forward.

Q. Was his name read again or was that the extent of the ceremony?

A. No. The name was read again and the defendant did not step forward.

Q. And is it your recollection that the defendant was advised there would be a fine and/or imprisonment for failure to do so?

A. This is my best recollection.

Q. Did you have an opportunity to question the defendant? A. Yes.

Q. And where did that take place?

A. In the same building, in a small anteroom.

Q. Who was present, besides yourself and the defendant?

A. Special Agent Miller of the F.B.I.

Q. What, if anything, did you say to the defendant and what did he say to you?

A. I identified myself as a Special Agent of the F.B.I. and I advised the defendant that any statement he made would be [14] voluntary and that such statement could be held against him in a court of law.

Q. You advised him that the statement could be used against him in a court of law if made?

A. I did.

Q. And then what took place, what was said to him and what did he say to you?

A. Then I asked him for his reasons for not being inducted, and he told me that his reasons were based on religious grounds.

(Testimony of John R. Hood.)

Q. Did he identify the organization or sect or religion that he belonged to?

A. Yes. He told me that he was a member of the Jehovah's Witnesses.

Q. Did you take a statement from the defendant? A. I did.

Q. And will you tell us how that statement was taken?

A. It was taken in longhand on a lined sheet of tablet paper.

Q. Who wrote the statement out?

A. I wrote the statement.

Q. Did the defendant sign it? A. Yes.

Q. Did he read it? A. Yes.

Q. Did he write anything on the statement himself? [15] A. He wrote a closing sentence.

Q. Do you have the statement with you?

A. I do.

Q. Will you produce it?

(Witness producing statement.)

Mr. Constine: May this be marked Government's Exhibit next in order, for identification?

The Court: Mark it for identification.

(Statement of defendant, 4/25/57, marked Plaintiff's Exhibit 2 for identification.)

Q. (By Mr. Constine): I might ask you this question, Mr. Hood. Do you recall whether you advised the defendant of any penalty for failure to

(Testimony of John R. Hood.)

submit to induction or failure to be inducted into the Armed Forces? What is your best recollection?

A. My best recollection is that I did advise him.

Q. What did you advise him, to the best of your recollection?

A. That there was a possibility of imprisonment and/or fine.

Q. For what?

A. For failure to be inducted.

Q. Do you recall whether you told him what the fine or imprisonment was?

A. No, I do not recall.

Q. You don't recall whether you advised him of the specific fine or imprisonment? [16]

A. That's right.

Q. You do recall that the Lieutenant did, but you don't remember at this time what the fine and imprisonment was?

A. That's right.

Mr. Tietz: No objection to this being received in evidence.

Mr. Constine: Does your Honor wish me to read it to the Court?

(Plaintiff's Exhibit 2 for identification received in evidence.)

Mr. Constine: Does your Honor wish me to read it to the Court?

The Court: Read it.

Mr. Constine (Reading): "April 25, 1957, Oakland, California." (And initialed at the top D.A.P.)

"I, David Allan Parr, furnished the following

(Testimony of John R. Hood.)

signed statement to John R. Hood, who has identified himself to me to be a Special Agent of the Federal Bureau of Investigation. No threats or promises have been made to me and I have been advised that I need not make any statement at all. I have been advised of my right to have an attorney and that the statement may be used in a court of law against me. I make this statement voluntarily. [17]

"I was born in Lewiston, Idaho, on April 17, 1933. My present address is 115 Mill Street, West Sacramento, California. I have been a Jehovah's Witness since 1940 and I have been a minister since 1941. I have refused to be inducted into the Armed Forces of the United States since I do not believe it is right to go to war or have any part of it. I believe anyone who is a true Christian would take the same stand. No one has advised me to refuse to be inducted into the Armed Forces."

(Initials D.A.P.)

On the other side, in other writing appears:

"Oakland, California, April 25, 1957.

"I have read the statement on reverse side of this page and it appears to be true. I understand that in my signing this there is no trickery involved.

/s/ DAVID A. PARR.

Witness:

JOHN R. HOOD,

Special Agent of the F.B.I.,
San Francisco;

ALFRED C. MILLER,

Special Agent, F.B.I., San
Francisco."

Mr. Tietz: There will be no cross-examination—if you are concluded with the witness, Mr. Constine.

Mr. Constine: All right.

(Witness excused.) [18]

KENNETH J. VOLLMER

called as a witness by the Government, being first duly sworn, was examined and testified as follows:

The Court: Your full name?

The Witness: Kenneth J. Vollmer.

The Court: Your business or occupation?

The Witness: U. S. Army, attached to the recruiting—main station—assigned to the induction station.

The Court: How long have you been in the Army?

The Witness: A little over seven years.

Direct Examination

By Mr. Constine:

Q. Sgt. Vollmer, were you a member of the Armed Forces while at the induction station in April of 1957? A. I was.

Q. And how long have you been assigned to the induction station in Oakland, California?

A. Since I moved there in November of '56.

Q. Since November of 1956?

A. At Oakland, right.

Q. You have been in the Army seven years?

A. Right.

(Testimony of Kenneth J. Vollmer.)

Q. And how long have you been doing induction work on behalf of the Armed Forces?

A. Approximately five years. [19]

Q. And, Sgt. Vollmer, directing your attention to April, 1957, I will ask you in April of 1957 and to date, would you explain to the Court the procedures used to induct civilians into the Armed Forces at the Oakland Induction Center.

Mr. Titez: I will object, your Honor. It is the procedure used in this particular case that we are interested in.

Mr. Constine: Your Honor, the Government is entitled to establish before the Court the standard practices then in use at the time of this offense, in April, 1957. I don't know if this witness can remember this particular defendant, but he was a witness to the case and he is entitled to say what the standard procedure was, based on his experience as a member of the induction force. It is a standard practice, and whether he can remember the defendant goes to the weight of his testimony, not the admissibility of it.

Mr. Tietz: If the Court please, the law on the subject is readily ascertainable. It is not a matter of practice. It is a matter of what the Army regulation was. If Mr. Constine wants to read to the Court for the record the Army regulations then in force, I have no objection, but you asked the witness what they did regularly, is besides the point.

Mr. Constine: Well, it be to Mr. Tietz, but I

(Testimony of Kenneth J. Vollmer.)

intend to ask this witness whether he was present at the induction ceremonieis for Mr. Parr. He may not be able to identify [20] Mr. Parr, but he may recall the incident, and that is what I am leading up to at this time, and I make an offer of proof that he does recall the incident, your Honor, although he may not be able to identify the man that was present, and I think that goes to the weight of his testimony.

The Court: The objection will be overruled.

Q. (By Mr. Constine): In April of 1957, will you advise the Court of the procedure used, particularly the case involving Mr. Parr—if you have any recollection of this incident. I will ask you that, first: Do you have any recollection of the man that refused induction on April 25, 1957, a Jehovah Witness?

A. I do, in that when he came out to us for processing for induction, upon interview he so stated, that he was a Jehovah Witness, and at which time he was to sign his fingerprint card and other associated forms for processing and he refused to sign any of the forms.

Q. He refused to sign any of the forms. In your mind, will you advise the Court whether this is something different from the usual case?

A. Yes.

Q. Will you advise the Court of what occurred, what the induction practice was, how it was conducted in April of 1957, to the best of your recol-

(Testimony of Kenneth J. Vollmer.)

lection—just from the beginning to the end—involving this defendant? [21]

A. Upon interview, he was informed—well, he so stated that he was a Jehovah Witness, that he would refuse induction, at which time, after explaining the violation of the Selective Service Act pertaining to that and informing him of the penalty, he was then turned over to the Officer in Charge for interview.

Q. Do you remember who that was at that time?

A. At that time it was Lt. Traynor.

Q. Is Lt. Traynor still there?

A. No, at the present time he is still on active duty.

Q. Do you know where he is?

A. Not at the present time.

Q. Did you explain the penalty to the individual at that time going through the processing, this Mr. Parr? Was it you or someone in your presence that explained the penalty to Mr. Parr?

A. To the best of my recollection, I don't particularly remember if I did or the other sergeant involved there at the time did.

Q. But you heard the penalty explained?

A. Yes, it was explained.

Q. And what is that penalty, do you know yourself?

A. Trial by federal court, imprisonment in a federal institution for a period of five years and/or a fine of \$10,000, or both.

(Testimony of Kenneth J. Vollmer.)

Q. Were you present when the ceremony took place that Agent Hood observed? [22]

A. Yes.

Q. And tell us what took place at that time, to the best of your recollection.

A. At that time the defendant was in front of the Captain—at the Lieutenant's desk, and the Lieutenant so stated: You are about to be inducted into the Army * * * and went through the procedure in the regulation.

Q. Did he read him the regulation?

A. Yes. And he so informed him of the violation, at which time the Lieutenant called the defendant's name twice, and in both instances he refused to step forward and be inducted.

Q. Now, this failure to sign certain forms, when did that take place, to the best of your recollection?

A. Upon the initial interview, the first interview.

Q. I see. Were you present then?

A. To the best of my recollection, I don't know if I did or the other sergeant did, but I was in the immediate area.

Q. Have you, within your recollection in the five years you were with the induction station, ever witnessed an induction ceremony yourself involving a conscientious objector, one who refuses induction, in which the ceremony is not read and in which the penalty is not explained? A. No.

Mr. Tietz: My objection, of course, goes to all this witness' testimony? [23]

(Testimony of Kenneth J. Vollmer.)

The Court: The objection will be overruled.

Q. (By Mr. Constine): Are you able, Sgt. Vollmer, at this time, to identify the defendant?

A. He is vaguely familiar, but, to the best of my recollection, I couldn't definitely.

Cross-Examination

* * *

Redirect Examination

By Mr. Constine:

Q. Do I understand from your testimony on direct—and I am not satisfied with Mr. Tietz's question—do you recall whether the Lieutenant said that "Your step forward will constitute your induction," do you recall that?

Mr. Tietz: I am going to object, your Honor, to any leading question.

Mr. Constine: I am asking the direct question.

Mr. Tietz: It is a leading question.

The Court: The question is leading. The objection will be sustained.

Mr. Constine: Do you recall what was said at the end of the ceremony at this time? Do you recall whether anything was said about him being inducted and what would constitute his induction?

A. Yes, in that by taking a step forward it would constitute his induction, which was part—— [24]

Q. Do you recall that was said?

(Testimony of Kenneth J. Vollmer.)

A. To the best of my recollection, yes.

Q. Do you recall any ceremony that you have ever witnessed when that was not said? A. No.

Mr. Tietz: I will object——

Mr. Constine: He has a right to say that he——

The Court: That has been asked and answered.
Let it stand.

Mr. Constine: No further questions.

Mr. Tietz: No further questions.

(Witness excused.)

Mr. Constine: The Government will rest at this time, your Honor.

* * *

DAVID ALLAN PARR

called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

The Court: Your full name, please?

The Witness: David Allan Parr.

The Court: Take the witness, counsel.

Direct Examination

* * *

Mr. Tietz: Offer it in evidence. (Letter, 2/18/57, M. H. Larson to David A. Parr.) [25]

Mr. Constine: Object to that as incompetent, irrelevant and immaterial. There is no foundation for this as part of the Selective Service file or that this defendant submitted it to the Selective Service, and

(Testimony of David Allan Parr.)

it is hearsay. You cannot submit an ex parte statement from a witness.

Call the witness to testify.

This is an ex parte statement. It is the rankest kind of hearsay. How do we know that was done under oath?

* * *

The Court: I don't think that statement is any evidence in this case.

(Letter, 2/18/57, Larson to Parr, marked Defendant's Exhibit A for identification.)

Cross-Examination

By Mr. Constine:

Q. You were given a copy of the recommendation of the Department of Justice, isn't that correct—you saw the recommendation? A. No.

Q. You never did see the recommendation of the Department of Justice to the Appeal Board?

A. No. I am sure I didn't.

Q. You never knew what the Department recommended to the Appeal Board in your case?

A. Yes. [26]

Q. How did you know that?

A. I received a resume of it—some notes on what Williams had told them, and that was given as the reason that they gave me the 1-A.

Q. And, in fact, did you write a letter to the Appeal Board disagreeing with certain matters in

(Testimony of David Allan Parr.)

Mr. Williams' report and the Department of Justice recommendation?

A. Disagreeing with the matters that were mentioned in this resume that I received of that recommendation, yes.

Q. And this is an original of a letter that is already in evidence. May I show you a letter dated February 11, 1957, from yourself in which you say:

"In answer to the 'Recommendation of the Department of Justice to the Appeal Board' "——

What are you referring to?

A. (Witness examining document): Well, this might be called leaving out a word there. Now, this would be correct, if I said "In answer to the Resume of the recommendation to the Department of Justice."

Q. Didn't the Department of Justice send you the recommendation of the Department to the Appeal Board, and didn't you see what they said and what they recommended?

A. Wait a minute, the recommendation of who?

Q. Of the Department of Justice.

A. To the Appeal Board. Now, is that the recommendation of Mr. Williams? [27]

Q. That is contained in the Department of Justice letter, yes, sir.

A. I said it was a resume of it.

Q. And did you have an opportunity to see what the F.B.I. had discovered about you, the same thing that Mr. Williams had—did he discuss that with you, what your reference had said?

(Testimony of David Allan Parr.)

A. That is the same case, now. It was a series of notes that they gave me that were incomplete, with no names, no nothing, just a few instances.

Q. May I show you this—was this the type of resume—it says “Resume of the Inquiry.” Isn’t that what you read and saw and observed—there were no names or no addresses?

A. Yes, this is it.

Q. May I ask you one additional question, then, Mr. Parr? At the time you were inducted, at the time of the induction ceremony in Oakland, California, you understood, did you not, that you would face an imprisonment penalty for failure to submit to induction?

Mr. Tietz: Now, object, there was no direct testimony on this, your Honor.

The Court: The objection will be overruled.

Mr. Tietz: I think it is improper cross-examination, your Honor.

The Court: The Court has ruled.

The Witness: The question? [28]

Q. (By Mr. Constine): Did you understand at the time you refused to step forward and submit to induction, because of your religious beliefs, as you say, that you would be facing civil penalty, a penalty of perhaps a fine, or imprisonment?

A. Well, yes, for the last ten years or so all of the Witnesses have to face it, either a penalty or go into the Army.

Mr. Constine: No further questions.

(Witness excused.)

Mr. Tietz: We rest, your Honor.

(Argument.)

The Court: I find the defendant guilty as charged.

[Endorsed]: Filed February 13, 1959. [29]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing & accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein, as designated by the attorney for the appellant;

Indictment.

Judgment & Commitment.

Extension of Time for Appeal.

Motion for Judgment of Acquittal.

Waiver of Jury Trial.

Motion to Quash Subpoena.

Subpoena.

Defendant's Exhibit A.

Plaintiff's Exhibits 1 & 2.

Minute Orders for October 6th & 7th, 1958.

Notice of Appeal.

Designation of Record.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 12th day of January, 1959.

C. W. CALBREATH,
Clerk,

[Seal] /s/ WM. J. FLINN,
Deputy Clerk.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the following is the original filed in this Court in the above-entitled case and that it constitutes the supplemental record on appeal herein.

Partial transcript, proceedings on appeal, Reporter's Transcript Oct. 6, 7, 1958.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 16th day of February, 1959.

C. W. CALBREATH,
Clerk,

[Seal] By /s/ J. P. WELSH,
Deputy Clerk.

[Endorsed]: No. 16319. United States Court of Appeals for the Ninth Circuit. David Allen Parr, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed and Docketed: January 12, 1959.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

No. 16319

DAVID ALLEN PARR,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON
APPEAL

Appellant will rely upon the following points in the prosecution of his appeal from the judgment entered in the above-entitled cause.

I.

The denial of the claim for classification as a conscientious objector was without basis in fact and the recommendation of the Department of Justice and the classification given to appellant by the appeal board were arbitrary, capricious and without basis in fact.

II.

The appellant was illegally denied his right to have the use of the FBI report upon the trial to test and determine whether the resume of the FBI report sent to the appeal board was illegal because

it omitted favorable evidence appearing in the FBI report that Parr was a bona fide conscientious objector, notwithstanding the report of the hearing officer and the recommendation of the Department of Justice.

III.

The report of the Hearing Officer relied upon by the Department of Justice and the Appeal Board, and the recommendation of the Department to the Appeal Board are arbitrary, capricious and illegal because they refer to artificial, fictitious and unlawful standards not authorized by the Act and Regulations and were used by the Appeal Board to classify according to irrelevant and immaterial lines in determining that the defendant was not a conscientious objector when a pursuit of the Act and Regulations was the only thing for the Hearing Officer, the Department, and the Appeal Board to follow. Further, the report of the Hearing Officer relied upon by the Department of Justice and the recommendation of the Department relied upon by the Appeal Board were based upon and/or were tainted with suspicion and speculation.

IV.

The defendant was denied a fair hearing before the Appeal Board in that he was not given the following evidentiary material in time to use it before the Appeal board decision (or at any time): the full reports of the Federal Bureau of Investigation

concerning the defendant, and the full report of the Hearing Officer.

V.

The Government wholly failed to show that defendant refused to submit to induction in that he was not given the opportunities provided by the applicable regulations to go through the mandatory induction prerequisites at the induction station.

/s/ J. B. TIETZ.

[Endorsed]: Filed January 20, 1959.